



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

VIA CERTIFIED MAIL AND ELECTRONIC TRANSMISSION

Corporation Service Company
Re: United Parcel Service, Inc.
209 West Washington St.
Charleston, WV 25302
SOP@ups.com

Mr. Norman M. Brothers, Jr., Esq.
Chief Legal and Compliance Officer
UPS Corporate Office
55 Glenlake Parkway, NE
Atlanta, GA 30328
nbrothers@ups.com

To Whom it May Concern:

The U.S. Environmental Protection Agency, Region III ("EPA") is seeking information pursuant to the authority granted to it under Section 308 of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1318 and the regulations promulgated thereunder regarding any involvement by the United Parcel Service, Inc. ("UPS") at a property owned by Waco Oil and Gas Company ("Waco") located at approximately 1.25 miles southeast on Route 19 from the intersection of Route 19 and I-79 in Sutton, Braxton County, West Virginia ("the Site"). The Site is also identified in Exhibit A.

Compliance with this Information Requirement is mandatory. Failure to respond fully and truthfully to the Information Requirement in accordance with deadlines set forth, or to adequately justify such failure to respond, can result in enforcement action by EPA pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Providing misleading, false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001. The information you provide may be used by EPA in administrative, civil, or criminal proceedings.

You may assert a business confidentiality claim covering all or part of the information required herein in the manner described in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information required herein when it is received, EPA may make the information available to the public without further notice to you.

This Information Requirement is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35 (See 5 C.F.R. § 1320.3(c)).

Your response is required within **thirty (30) days of receipt of this letter**. Please send your response electronically to Ms. Katelyn Almeter as set forth in the instructions.

This request is of an ongoing nature. Should any additional information or documentation become available after provision of the responsive documents by Respondent, then Respondent is under an obligation to provide such additional information or documentation to EPA.

Should you have any questions regarding this Information Requirement, please contact Katelyn Almeter at (215) 814-2797, almeter.katelyn@epa.gov, or your counsel may contact Aviva Reinfeld, Assistant Regional Counsel, at (215) 814-2632, reinfeld.aviva@epa.gov.

Sincerely,

Richard A. Rogers, Branch Chief
Water Branch
Enforcement and Compliance Assurance Division

Enclosures (2)

cc: Jeremy Bandy (WVDEP) (jeremy.w.bandy@wv.gov)
Brad Wright (WVDEP) (brad.m.wright@wv.gov)
Katelyn Almeter (EPA) (almeter.katelyn@epa.gov)
Aviva Reinfeld, Esq. (EPA) (reinfeld.aviva@epa.gov)

INFORMATION REQUEST

This information is requested pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318. The instructions and definitions for responding to this Information Request are as follows:

A. Instructions

1. Provide a separate narrative response for each question set forth below and for each subpart of each question.
2. Identify each answer with the corresponding number of the question and subpart to which it responds.
3. State the name, address, email address, telephone number, and occupation of each person providing responses, or contributing information to responses, to each request for information below.
4. Provide all documents in your possession which relate to the responses given. With respect to each document, identify the date, author, addressee, current location, and custodian and identify the question or subpart to which it relates.
5. Answer each question to the extent possible. If any question cannot be answered in full, explain why to the extent possible. If your responses are qualified in any manner, please explain.
6. If information or documents unknown or unavailable to you as of the date of your response to this request become known or available to you after submitting your response to the request, you must supplement your response to EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide a corrected response.
7. Each submission pursuant to this request must be accompanied by the following certification and must be signed by a representative of the United Parcel Service, Inc. and authorized to respond on behalf of that entity.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."

Signed: _____
Title: _____
Date: _____

8. All information shall be submitted within 30 days of receipt of this Request for Information via e-mail to:

Katelyn Almeter
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region III
1650 Arch Street (3ED31)
Philadelphia, PA 19103-2029
almeter.katelyn@epa.gov

B. Definitions

1. The terms “you” and “your” shall refer to the United Parcel Service, Inc. (hereinafter, “UPS”), and its subsidiaries, past and present members, affiliates, predecessors or successors-in-interest, assignees, managers, officers, supervisors, officials, employees, servants, agents, representatives, consultants, and contractors and all other person acting on its behalf.
2. The term “Waco” refers to Waco Oil and Gas Company, owned by Mr. I.L. Morris and its subsidiaries, past and present members, affiliates, predecessors or successors-in-interest, assignees, managers, officers, supervisors, officials, employees, servants, agents, representatives, consultants, and contractors and all other person acting on its behalf.
3. The term “document” shall refer to a “writing,” “recording,” and “photograph” as those terms are defined in Rule 1001 of the Federal Rules of Evidence. The term “document” shall also refer to electronically stored “writings,” “recordings,” “emails,” and “reports,” among other things, created in the ordinary course of business and that are relevant to the operation or business undertakings of UPS or other business entities owned or operated by UPS. Documents should be produced as they are kept in the usual course of business.
4. The term “communication” means any act or instance of information being transmitted, including by verbal, written, and electronic means.
5. The term “Route 19 Site” or “Site” refers to Braxton County Parcel ID: 04-06-008Q-0009-0000 located approximately 1.25 miles southeast on Route 19 from the intersection of Route 19 and I-79 in Sutton, Braxton County, West Virginia (38.6087, -80.7368) as shown in **Exhibit A** attached herein.

6. The term “pollutant” refers to “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 40 C.F.R. § 122.2.
7. The term “Best Management Practices” or “BMPs” refers to “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.” 40 C.F.R. § 122.2.
8. The term “discharge of fill material” refers to the addition of any pollutant, including rock, sand, dirt, or other material, into waters of the United States which has the effect of replacing portions of those waters with dry land or changing the bottom elevation of those waters, as defined in 40 CFR Part 232.
9. The term “work” includes, but is not limited to, construction of any structures, or the grading, mechanized land clearing, filling, and other land disturbing activities conducted on the Site.
10. The term “Notice of Intent” refers to the application for coverage under a general National Pollution Discharge Elimination System (“NPDES”) permit issued by the West Virginia Department of Environmental Protection (“WVDEP”), authorizing certain discharges of pollutants, including stormwater.
11. The term “identify” with respect to a natural person means to provide that person’s name, address, telephone number, title, and relationship to Respondent. The term “identify” with respect to a business entity means to provide that entity’s name, address, and relationship to the Respondent, and to provide the name, address, telephone number, and title of an individual who can provide information related to, and on behalf of, the entity.
12. The term “Day” shall mean a calendar day. In computing any period of time under this Request pursuant to Section 308, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the close of the next business day.

C. Request for Information

UPS is hereby required, pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318, to submit the following information pursuant to the instructions and definitions set forth above.

1. State the name, address, telephone number, and occupation of each person providing responses, or contributing information to the responses, to these requests for information. Please provide the name and address of your agent for service of process, and address. Identify your business form. If a corporation, please give the corporation's date and state of incorporation. If an LLC or sole proprietorship, please give the initial date of filing with the state.
2. Describe any interest that UPS possesses in the Site, including but not limited to any ownership interest, lease interest, tenant interest or other interest. Provide copies of all documents reflecting UPS's interest in the Site.
3. Describe the nature of UPS's relationship with Waco Oil and Gas Company regarding the Site. State the date on which this relationship began, the date negotiations between UPS and Waco began, and the date of the first communication between UPS and Waco regarding the Site, including any oral communications.
4. Provide copies of all written communications between Waco and UPS regarding the Site, including but not limited to, any emails, documents, and other written communications. Describe any oral communications.
5. State the nature of UPS's business on the Route 19 Site from the date identified in your response to No. 3 to present.
6. Provide copies of all permits and/or other authorizations issued or provided by any governmental entity (federal, state, local) to conduct construction or operations at the Site. Your response must include, but is not limited to, any permits obtained by any lessee, tenant or owners on Site from January 1, 2016 to present.
7. Provide copies of all applications for permits or other authorizations submitted to any governmental entity (federal, state, local) to conduct construction or operations at the Site whether submitted by you or any lessee, tenant or prior owner from January 1, 2016 to the present.
8. Identify all entities who are party to any contract or agreement to use the Site or perform work on the Site, and provide the name(s), address(es), and telephone numbers of the individual(s) or contractor(s) responsible for conducting the work. Provide copies of all agreements, or parts thereof reduced to writing, and describe any oral agreements.
9. Identify and provide copies of all contracts and agreements, including lease agreements, that have been entered between UPS and any person(s) or business(es) regarding the Site.

Indicate whether such contract or agreement is currently in effect. This request includes, but is not limited to:

- a. Any oral agreements between UPS and any person(s) or business(es) with an interest in the Site; and
 - b. Any agreements, including any lease agreement between Waco and the United Parcel Service.
10. Do UPS and Waco have any indemnity agreements? If so, please explain and provide the agreement(s).
11. What is the size of the acreage within the Site over which UPS has an ownership interest? Provide a map that shows the portion of the Site leased to UPS.
12. Provide copies of all documents related to work, as defined in the Instructions above, performed at the Site since UPS began its relationship with Waco. Such documents should include but not be limited to plans, drawings, specifications, permits, agreements, contracts, receipts, invoices, checks, and other documents which relate to work at the Site or billing or compensation for work at the Site. State the amount of compensation paid for each instance of work performed at the Site. Provide documentation of all compensation paid for work performed at the Site.
13. Did UPS know of any communications between Waco and EPA and/or WVDEP regarding the Site at any point in time? If so, please describe.
14. Did Waco disclose to UPS at any time the fact of or substance of its negotiations with EPA regarding Waco's potential violations of the Clean Water Act associated with the Site?
15. Did UPS perform any due diligence regarding the Site prior to entering into the lease, including an appraisal of the status of aquatic resources on Site, and the overall stabilization of the Site? Did UPS perform any delineations of wetlands, streams or other aquatic resources or observe unstable areas on Site?
16. Did UPS conduct any land disturbance to construct any buildings on the Site? If so, how many acres of land were disturbed?
17. What is the status of construction on the Site?
18. Provide a description of what UPS is building on the Site and for what purpose.
19. Does UPS have any future plans for additional work on the Site? Explain the nature of this work, where it would be located on the Site and when UPS is planning on conducting the work.

20. Did UPS ever install any erosion and sediment control Best Management Practices at the Site? If so, describe the BMPs, where they were installed, when they were installed, and if they were a part of any permit coverage.
21. Did UPS ever discharge fill material on Site? If so, explain where on Site, when the fill occurred, and the amount of fill.